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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,693	02/21/2007	Andreas Hinrichs	10191/4310	4959
26646	7590	03/04/2009	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			HUANG, TSAN-YU J	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,693	Applicant(s) HINRICHES ET AL.
	Examiner TSAN-YU JAY HUANG	Art Unit 3685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

- 1) Responsive to communication(s) filed on 20 March 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 16-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 16-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/20/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

This Office Action is in response to the original application filed on March 20, 2006.

The Examiner notes that the scope of the claim rejections in the Office Action are not limited to the prior art citations listed in the claim rejections, but in fact encompasses the prior art in their entirety. The Applicant is advised to review the prior art in its totality when considering the Office Action.

The Examiner notes that United States Patent Application Publication paragraph numbers in the Office Action will be referred to as [####], #### representing the paragraph number.

The Examiner notes that an ellipsis (...) marks an intentional omission of a phrase from the original text, and is not shorthand for the actual phrase.

Status of Claims

Claims 1-15 are cancelled by Applicant.

Claims 16-31 are currently pending and have been examined.

Claims 16-31 are rejected as set forth below.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 16-31** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. **Regarding claim 16**, the claimed invention discloses a system for procuring a service that can be implemented as a computer program. It is important to note that a server is not necessarily a physical hardware, as it could be interpreted as a software module. (*Microsoft Press Computer Dictionary Third Edition*, a server is defined as "a program that responds to commands from a client") Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. *See Lowry*, 32 F.3d at 1583-84, 32 U.S.P.Q. 2d at 1035. The rejection applies to dependent **claims 17-31**.
4. **Regarding claim 16**, the claimed invention discloses a system that includes a plurality of subscribers which can be interpreted as a human being. If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed

invention is directed to nonstatutory subject matter. See *MPEP §2105*. The rejection applies to dependent **claims 17-31**.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 16-31** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. **Regarding claim 16**, the preamble recites a system for procuring a service, the system comprising various features. The body of the claim, however, is not commensurate with understood definition of a system. For example, a server is not necessarily a physical hardware, as it could be interpreted as a software module.

(*Microsoft Press Computer Dictionary Third Edition*, a server is defined as “a program that responds to commands from a client”) More specifically, the various recited elements fail to provide any structure and merely recite functionally descriptive material and abstract ideas. It is thereby unclear what structure the system is comprised of and how the various features combine to form a system. See *In re Zletz* 13 USPQ2d 1320 (*Fed. Cir. 1989*). The rejection applies to dependent **claims 17-31**.

8. **Regarding claims 17-18, 21-26, 28-29**, the invention purports to be both a product or machine and a process and therefore is ambiguous. For example, the limitations fail to disclose a structural limitation of a system, but instead disclose an action that is equivalent to a step in a method claim. See *Ex Parte Lyell*, 17 USPQ2d 1548 (*B.P.A.I. 1990*).

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9. **Regarding claims 18 and 20,** the claim language is indefinite because the invention as defined in the dependent claim contains limitations that are outside of the scope of the invention as defined in the independent claim 16. For example, there is no mention of "supply and demand" and it is unclear how the limitation fits in the context of claim 16. See *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. **Claims 16-20, 23, 27, 30-31** are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Application Publication No. 2002/0186144 to *Meunier*.

12. **Regarding claim 16, Meunier** teaches:

A system for procuring a service, comprising:

at least one stationary server; ([0062], the CRMLS is the stationary server)

a plurality of subscribers including suppliers and interested parties; ([0032], the vehicle rental service provider that owns and operates the vehicle is the subscriber; [0059] – [0060], the interested party is the user)

a communications arrangement that enables at least an information exchange between the at least one stationary server and the subscribers; ([0061] – [0062], [0105] – [0113], the in-vehicle data/voice telecommunication system is the communications arrangement)

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a positioning arrangement for determining a current position of the subscribers; ([0113], the GPS is the positioning arrangement) and

a memory for at least temporarily storing data corresponding to position and route information of the subscribers. ([0132] – [0137], the central computer server contains memory)

13. **Regarding claim 17,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches:

transportation requests from interested parties received by the system are compared to transportation offerings registered by the suppliers in real time, ([0032], the vehicle rental service provider that owns and operates the vehicle is the subscriber; [0192] – [0193], the users are the interested parties) and

if matching offerings are found, the matching offerings are communicated to the interested parties. ([0192] – [0193])

14. **Regarding claim 18,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches “wherein in the case of a match between supply and demand, a

communication link is established between a supplier and an interested party." ([0172] – [0175], the registration process uses the communication link)

15. **Regarding claim 19,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches "wherein the position arrangement determines the current position in real time." ([0113], GPS is in real-time)

The prior art cited in the discussion of claim 19 teaches all of the limitations in claim 19 that are given proper patentable weight. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See *MPEP 2114; In re Swineheart*, 169 USPQ 226; *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

16. **Regarding claim 20,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches "wherein supply and demand include not only starting point and destination point, but also route information." ([0413] – [0424], the demand-side measures to redistribute users to match a given vehicle distribution uses starting point, destination point, and route information)

17. **Regarding claim 23,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches “wherein offerings are provided in the form of one of a list and a map display containing time information.” ([0197])

18. **Regarding claim 27,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

The prior art cited in the discussion of claim 27 teaches all of the limitations in claim 27 that are given proper patentable weight. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See *MPEP 2114; In re Swineheart*, 169 USPQ 226; *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

19. **Regarding claim 30,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches “a memory for storing parameters identifying the suppliers and the interested parties.” ([0132] – [0137], the central computer server contains memory)

20. **Regarding claim 31,** *Meunier* discloses the invention as claimed. See the discussion of claim 16.

Meunier further teaches “wherein the service includes one of a rideshare opportunity and a transportation service.” (Abstract, the service is a transportation service)

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

The reference *Chase* (United States Patent Application Publication No. 2003/0034873) discloses a method and system for an automated car sharing system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TSAN-YU JAY HUANG whose telephone number is (571)270-7039. The examiner can normally be reached on Monday to Friday, 9:00 am - 5:00 pm Eastern Standard Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TSAN-YU J HUANG/
Examiner, Art Unit 3685
February 25, 2009

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685